

REMARKS

The Examiner has rejected Claims 1-63 under 35 U.S.C. 102(e) as being anticipated by Gampper et al. (hereinafter, "Gampper," 6,003,082). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove.

Specifically, the Examiner relies on the following excerpts from Gampper, in order to make a prior art showing of applicant's claimed: "sending at least one download controlling message from said source computer to at least one of said plurality of target computers" and "controlling downloading of said computer file by said at least one of said plurality of target computers in dependence upon said download controlling message" (see this and/or similar language in each of the independent claims).

"If the criteria are not satisfied, the current conditions are not appropriate for the user's particular request. In this case, the request is later resubmitted to the internet at an appropriate time. More specifically, if the criteria are not satisfied, the server caches the URL, sends a message to the internet to abort the request, determines when to resubmit the request in compliance with the criteria, and schedules resubmission of the URL to the internet at the determined time. Caching of the URL may be skipped if the URL has been previously cached, or if conditions warrant aborting the request completely. Notification may be sent to the user advising him/her of any delay and the status of the user's internet request." (col. 2, lines 48-60)

"According to one approach, the compiled information may be evaluated first to determine whether any condition prevents the download request from completing. For instance, if the user's profile prohibits downloading during certain times, and the server shows the current "time of day" in this range, the request cannot complete. As another example, the user's download request is prevented if it seeks data of an impermissible size or type. Next, if none of these preventive conditions exist, the server's busyness and average priority of download requests are evaluated to determine whether the current request should proceed. For example, if the server's loading is high, the current request may be rejected in favor of ongoing requests with higher priority indices. Conversely, with low server loading, the current request may be accepted even if the average ongoing download request is higher than the requesting user's priority." (col. 9, lines 30-45)

"More particularly, the requested data is downloaded and stored locally at the terminal 104 or server 101, and the server 101 notifies the user of the completion of the download request and resulting availability of this data.

NAI1P160/00.011.01

22

Terminating Request

On the other hand, if current conditions do not warrant completion of the request, the request is processed in step 416. The request may be processed in different ways, depending upon the request, user, and system status. In the illustrated example, the following outcomes are provided:

1. CACHE/SUSPEND: The request may be suspended and cached for resubmission to the internet later. In this embodiment, the request (of step 404) is aborted by sending an appropriate message to the internet 102. Also in this step, the URL is stored in the cache store 110 in association with the requesting one of the terminals 104, and appropriate criteria is established for resubmitting the cached request. This criteria may specify certain conditions in the server 101, expiration of a wait timer, satisfaction of a predefined resubmit schedule, or other conditions for resubmitting the cached request. The server 101 may also send an advisory message to the requesting terminal 104, notifying the user of the delay. The cached request is resubmitted by proceeding along the path 419 to step 418.

2. SUSPEND/KEEP: If the URL has already been cached for the requesting terminal, the cache entry is permitted to remain. However, the current request is suspended by sending an appropriate abort message to the internet 202. The server also establishes appropriate criteria (e.g., wait timer expiration) for resubmitting the request. The server 101 may also send an advisory message to the requesting terminal 104, notifying the user of the delay." (col. 10, lines 15-52)

After careful review of such excerpts and the remaining Gampper reference, however, it is clear that such reference merely discloses the transmission of a "notification" from the server to the target computers (i.e. "terminals). Such "notification" is merely sent to the user "advising him/her of any delay and the status of the user's internet request" and "notifies the user of the completion of the download request and resulting availability of this data."

Thus, Gampper fails to disclose, teach, or even suggest any sort of "sending at least one download controlling message from said source computer to at least one of said plurality of target computers" and "controlling downloading of said computer file by said at least one of said plurality of target computers in dependence upon said download controlling message." In other words, Gampper does not send any sort of download controlling message to the target computers for allowing the target computers to control the download of the computer file based on the download controlling message. Instead, the server of Gampper controls such downloading.

Only applicant teaches and claims such a feature where the source computer sends a control message to target computers which, in turn, control the manner in which the target computers themselves download a computer file. Simply nowhere in the prior art is there such a unique technique for preventing an overload of the source computer.

To further emphasize this distinction and in the spirit of expediting the prosecution of the present application, applicant now claims in each of the independent claims: "wherein said download controlling message is sent from said source computer to said target computers, in order to control the manner in which said target computers download said computer file," or similar language.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

This criterion has simply not been met by the Gampper reference. Thus, a notice of allowance, or a specific prior art showing of the foregoing claim limitations, in the context of the remaining claim elements, is respectfully requested.

Still yet, applicant notes that the Examiner's application of the Gampper reference to applicant's dependent claims is similarly deficient, as Gampper completely lacks the crux of applicant's claimed invention. Just by way of example, not only does Gampper not even suggest sending a download controlling message from a source computer to a plurality of target computer, but Gampper further fails to even suggest the specific download controlling message-related method set forth below:

"said download controlling message includes a broadcast message, said method comprising the steps of:

issuing said broadcast message from said source computer to said plurality of target computers indicating availability of said computer file for download from said source computer, said broadcast message including at least one download qualifying parameter;

receiving said broadcast message at said plurality of target computer;

determining for each target computer of said plurality of target computers that received said broadcast message whether or not said target computer already has said computer file;

determining for each target computer that does not already have said computer file in dependence upon said at least one download qualifying parameter whether or not said target computer qualifies to download said computer file in response to said broadcast message;

downloading said computer file from said source computer to those target computers that do not already have said computer file and that qualify to download said computer file;

monitoring how many target computers download said computer file in response to said broadcast message; and

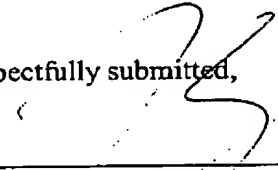
adjusting at least one download parameter used in a following broadcast message issued by said source computer in dependence upon how many target computers downloaded said computer file in response to said broadcast message" (see Claim 2 et al.)

A specific prior art showing of such details or an indication of allowability is respectfully requested.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner

is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAI1P160/00.110.01).

Respectfully submitted,

By: 
Kevin J. Zilka
Reg. No. 41,429

Date: 64/30/04

Silicon Valley IP Group, P.C.
P.O. Box 721120
San Jose, California 95172-1120
Telephone: (408) 971-2573
Facsimile: (408) 971-4660

NAI1P160/00.011.01

26